

## REMARKS

This paper is filed in response to the Restriction Requirement mailed August 10, 2009. Claims 1–21 are pending in the application and subject to restriction. Claims 2, 3, and 6 have been canceled and Claims 1, 4, 5, 7–9, and 11–21 have been amended. Reconsideration and allowance of Claims 1, 4, 5, and 7–21 are respectfully requested in view of the above amendments and following remarks.

### Restriction Requirement

Claims 1-21 are subject to an election of species requirement based on an asserted lack of unity of invention. Species A-S were identified by the Examiner. Applicant hereby elects Species A, illustrated in Figures 1-3 and recited in Claims 1, 4, 5, and 7-21.

### Claim Amendments

The feature "the tube-like container is provided with an easy break-off mark at least one place between both ends of the tube wall" is amended as "the tube-like container (10) is provided with a circumferential easy break-off mark (13) on the tube wall between both ends (11, 12) thereof." The support for this amendment is found in the application at page 22, lines 24–28.

The features:

the position of the easy break-off mark (13) in the longitudinal direction of the tube-like container (10) is such that the second end (21) of the rod (20) extends beyond the cross section of the tube-like container (10) having the easy break-off mark (13), and when the tube-like container (10) is broken off along the easy break-off mark (13) into two parts (10a, 10b), the second end (21) is exposed out of the broken opening of the parts (10b) with the wiping body (30) . . .

are incorporated into Claim 1. The support for these amendments can be found on page 16, lines 9–12, as well as on page 17, lines 13–20, of the application.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

The feature "the rod is of elasticity" is amended as:

when the tube-like container (10) is broken off along the easy break-off mark (13), a flexible deformation (20a) of the rod (20) occurs under force without interfering with the breaking-off of the tube-like container (10) and the rod (20) can recover from the flexible deformation after said force that makes it deform is removed.

Support for this amendment is found on page 17, lines 13-20, of the application.

Claims 4, 5, 7-9, and 11-21 have been amended for consistency with Claim 1.

#### Anticipation and/or Obviousness

The Examiner has indicated that Species A (all pending claims) is anticipated by, or obvious in view of, U.S. Patent No. 6,494,856, issued to Zygmunt (referred to by the Examiner as "Frank"; hereafter referred to as "the '856 patent").

Amended independent Claim 1, and claims depending therefrom, are novel and non-obviousness in view of the '856 patent for the following reasons.

1. The material and configuration of the claimed product, as well as the means for opening the product, are novel and nonobvious in the claimed invention.

In particular, in the claimed invention, the outer packing for the rod (20) and the wiping body (30) is a tube-like container (10) having a thick wall and having both ends closed permanently. In the '856 patent, the outer packing is a sealed pouch (2) with interior cavity (4) (see the description of the '856 patent, Col. 2, lines 50-51) or a laminated foil pouch 2 with the perimeter sealed to prevent any contamination of the contents (see the description of the '856 patent, Col. 6, lines 60-61). The tube-like container (10) of the present invention is formed by a tube being closed permanently at both ends, while the foil pouch (2) of the '856 patent is formed by two pieces of foil being pressed onto each other.

In the present invention, the tube-like container (10) is provided with a circumferential easy break-off mark (13) on the tube wall between both ends (11, 12) thereof. Thus, the tube-

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

like container (10) of the claimed invention is broken off along the circumferential easy break-off mark (13) on the tube wall. In the '856 patent, the sealed pouch (2) can be torn apart at a tear arrow along a line of package weakness (see the description of the '856 patent, Col. 6, lines 62–63). In the claimed invention, the rod (20) is required to flexibly deform and recover from a user breaking of the tube-like container along the easy break-off mark. If not, the tube-like container (10) cannot be opened normally. While in the '856 patent, the stem (8) need not be flexibly deformable.

Due to the above-mentioned differences between the aspects of the material and the configuration of the claimed invention, as well as the way in which the claimed outer packaging is opened, compared to the '856 patent, the present invention and the '856 patent solve different technical problems and are distinct.

2. The anti-breakage capability of the wiper of the claimed invention is distinct from the '856 patent.

The tube-like container (10) of the claimed invention is robust, while the pouch of the '856 patent is easily damaged. In the '856 patent, during producing, transportation and storage, the pouch (2) is easily damaged (mechanically) because the pouch is made of foil. Sharp objects or the like would be particularly damaging. If the pouch were damaged, the swab (6) would be bacterium-contaminated such that the safety of a contained product would be compromised. Distinctly, in the claimed invention, the outer packing is in the form of a firm, tube-like container (10) (e.g., a polymer tube-like container with a wall thickness of more than 0.5 mm). Such a firm outer packing is unable to be torn apart in the same manner as the pouch of the '856 patent.

In addition, when the swab is inserted into the cavity of the tube-like container 10, the rod (20) of the swab must have sufficient elasticity. That is to say, when the tube-like

container (10) is bent, deformed, and broken off under force, it is required that a corresponding flexible deformation of the rod (20) occurs concurrently. If the rod (20) is rigid, it will hinder the tube-like container (10) from being broken off. During the flexible deformation of the rod (20), it is required that the rod (20) has enough elasticity to recover from the flexible deformation after the deforming force is removed. Thus, it is defined in the present invention that the rod has the following characteristic:

when the tube-like container 10 is broken off along the easy break-off mark 13, a flexible deformation 20a of the rod 20 occurs under force without interfering with the breaking-off of the tube-like container 10 and the rod 20 can recover from the flexible deformation after said force that makes it deform is removed.

Such an elasticity is unnecessary for the stem (8) of the '856 patent.

Such a tube-like container (10) of the present invention is not only firm but also easily opened. Thus, the present invention solves the problem of the '856 patent wherein the container (pouch) is easily compromised by puncture. The problem is solved by providing a firm tube-like container that provides access to the inside of the tube via an easy break-off mark.

3. The anti-bacterium-contamination capability of the claimed invention is novel and nonobvious compared to the product of the '856 patent.

In the '856 patent, when the pouch (2) is torn apart along a line of weakness, the torn opening will be crimped due to the action of the mechanical force and a part of the outer face (contamination face) of the pouch turns inwardly to contact and soil the torn opening. The swab (6) when being taken out from the torn opening will suffer from a bacterium contamination due to contact with the bacterium-contaminated torn opening and, thus, the possibility of aseptic manipulation is destroyed. In the present invention, because the tube-like container (10) is firm, the opening formed when the tube-like container is broken off will maintain its initial geometry shape, e.g., an annular shape. In the present invention, the crimp and inward turning of the

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>TM</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

broken opening would not occur as in the '856 patent. That is, the inner wall surface of the broken opening would not meet with the outer wall surface of the broken opening, and the inner wall surface of the broken opening formed by the tube-like container being broken off would not be contaminated. The swab, when being taken out from the broken opening, also would not be contaminated because the inner wall surface with which the swab may be contacted is clean.

Furthermore, when the tube-like container (10) is broken off, the swab is maintained in a lower part of the tube-like container (10b). In order to prevent the broken opening being contaminated by a person's hand due to the hand first contacting the broken opening when the swab is taken out, in the present invention, it is defined that

the position of the easy break-off mark (13) in the longitudinal direction of the tube-like container (10) is such that the second end (21) of the rod (20) extends beyond the cross section of the tube-like container (10) having the easy break-off mark (13), and when the tube-like container (10) is broken off along the easy break-off mark (13) into two parts (10a, 10b), the second end (21) is exposed out of the broken opening of the parts (10b) with the wiping body (30) . . .

so as to be grasped and taken out from the broken opening by a person's hand. Since the hand would not be in contact with the broken opening to result in contamination, the wiping body (30) would not be contaminated during use, such that aseptic manipulation is possible.

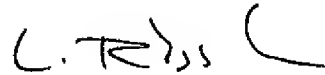
It follows that the above-mentioned distinct features are special technical features that define a contribution over the prior art, for example, the '856 patent. Thus, the newly amended independent Claim 1 is a generic claim and Claim 1 and its dependent claims possess novelty, nonobviousness, and unity of invention.

## CONCLUSION

Applicants believe that Claims 1, 4, 5, and 7-21 are in condition for allowance. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to call the undersigned attorney at 206-695-1698.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



L. Rhys Lawson, Ph.D.  
Registration No. 57,869  
Direct Dial No. 206.695.1698

LRL:mgp/ctg

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100